

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting application for conveyance of mineral interests. ES 31453.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests

An application for conveyance of mineral interests to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1982), may be approved where BLM determines (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected.

APPEARANCES: Mr. and Mrs. E. J. Wright, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Mr. and Mrs. E. J. Wright have appealed from the February 22, 1984, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting their application filed pursuant to section 209(b) of the Federal Land and Policy Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1982), for conveyance of the mineral interests owned by the United States. 1/

Section 209(b)(1) of FLPMA provides that:

The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United

1/ The application sought conveyance of the federally reserved oil and gas in lot 2, sec. 32, T. 23 N., R. 16 W., Louisiana Meridian, Caddo Parish, Louisiana, containing 54.40 acres. The oil and gas had been reserved in a homestead patent dated Dec. 21, 1931.

States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. [2/]

43 U.S.C. § 1719(b)(1) (1982).

BLM rejected the application because it found that the lands contain known mineral values. BLM noted that the lands had been leased both competitively and noncompetitively for oil and gas in the past and that the lands are presently under competitive lease to the Pennzoil Producing Company. BLM further stated that the lands are within the Rodessa Field Undefined Known Geologic Structure (KGS), which was effective September 14, 1973.

On appeal appellants do not point to any error in the BLM decision. Rather, they repeat with some elaboration the reasons stated in their application. They state that the land in question was homesteaded by Mr. Wright's mother, and that they purchased the land from her in 1982. They claim that although the land has been leased a number of times, "no minerals of any kind have been found." Appellants desire to improve the land by establishing a fish farm and planting an orchard. They do not want to expend funds to do so if the improvements might be destroyed. They believe they should be able to purchase the mineral rights at a reasonable price.

[1] An application for conveyance of mineral interest to the owner of the surface estate pursuant to section 209(b)(1) of FLPMA, supra, may be approved where BLM determines (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected. Denman Investment Corp., 78 IBLA 311 (1984).

The record clearly establishes the existence of known mineral values. 3/ The lands are within a KGS and are competitively leased under a lease dated

2/ The regulations implementing this section are found at 43 CFR Subpart 2720. Those regulations provide that their objective "is to allow consolidation of surface and subsurface or mineral ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development." 43 CFR 2720.0-2.

3/ The term "known mineral values" is defined at 43 CFR 2720.0-5(b) as: "[M]ineral values in lands with underlying geologic formations which are valuable for prospecting for, developing or producing natural mineral deposits. The presence of such mineral deposits in the lands may be known, or geologic conditions may be such as to make the lands prospectively valuable for mineral occurrence."

August 1, 1982. The high bid for the lease was \$206.75 per acre. The drilling of a well or the actual discovery of oil or gas is not necessary to support a conclusion that the lands contain known mineral values. See 43 CFR 2720.0-5(b).

Since the land contains known mineral values, a conveyance is authorized only if the mineral reservation interferes with or precludes appropriate nonmineral development of the land and such development would be a more beneficial use of the land than mineral development. Appellants are concerned that oil and gas exploration might interfere with their planned improvements. The record indicates that at the time of the mineral report (November 30, 1983), there had been no drilling activity on the lease. There is no evidence that oil and gas exploration will interfere with or preclude appellants' anticipated activities. Also there is no evidence that appellants' personal use of the land is a more beneficial use of the land than mineral development. See 43 CFR 2720.1-2(d)(4).

There can be no conveyance of the reserved mineral interest because the conditions for approval do not exist in this case. ^{4/} BLM properly rejected the application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

^{4/} Even if the conditions of section 209(b)(1) are satisfied, an applicant may not be entitled to a conveyance. The language of that subsection is discretionary. Denman Investment Corp., *supra* at 315.